

# Order

Michigan Supreme Court  
Lansing, Michigan

January 16, 2009

Marilyn Kelly,  
Chief Justice

136211

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 136211  
COA: 283172  
Kalamazoo CC: 06-002090-FJ

ANDRE CHARLES FERGUSON,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the March 3, 2008 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for reconsideration of that part of the defendant's application challenging the imposition of attorney fees in light of *People v Trapp (On Remand)*, 280 Mich App 598 (2008), and the prosecution's concessions that the trial court failed to articulate that it considered the defendant's ability to pay the cost of his court-appointed attorney fees at the time of sentencing and that a remand is necessary to enable the court to do so. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

CORRIGAN, J. (*concurring*).

I concur in the order remanding to the Court of Appeals for reconsideration in light of *People v Trapp (On Remand)*, 280 Mich App 598 (2008), only because the prosecution conceded in its brief before the Court of Appeals that defendant was entitled to a remand for the trial court to articulate that it considered defendant's ability to pay at the time of sentencing. Cf. *People v Trapp*, 482 Mich \_\_\_\_ (Docket No. 136056, order entered November 5, 2008).

HATHAWAY, J., not participating. To avoid unnecessary delay to the parties in cases considered by this Court before I assumed office, I follow the practice of previous justices in transition and participate only in cases that need my vote to achieve a majority for a decision.



s0113

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 16, 2009

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk